

ESSB 5012 - H AMD 550

By Representative Schual-Berke

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** INTENT. The legislature intends to
4 authorize the establishment of public optional schools within the
5 general and uniform system of public schools for the primary purpose of
6 providing more, high quality learning environments to assist
7 educationally disadvantaged students and other students in meeting the
8 state's academic standards. The legislature intends for optional
9 schools to function as an integral element of the public school system
10 maintained at public expense, and to be subject to the same academic
11 standards and performance outcomes as other public schools. The
12 legislature intends to encourage school districts to consider using
13 optional schools as a tool for achieving state and federal
14 accountability goals. The legislature finds that in addition to
15 providing more, high quality public school choices for families,
16 teachers, and students, public optional schools may be a tool for the
17 improvement of schools in which significant numbers of students
18 persistently fail to meet state standards. The legislature also
19 intends to authorize the use of optional schools as a state
20 intervention strategy, consistent with the provisions of the federal no
21 child left behind act of 2001, to provide assistance to schools in
22 which significant numbers of students persistently fail to meet state
23 standards.

24 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
25 requires otherwise, the definitions in this section apply throughout
26 this chapter.

27 (1) "Alternate sponsor" means the board of directors of the
28 educational service district in which the proposed optional school will

1 be located, when such board has approved a contractual performance
2 agreement for the operation of an optional school.

3 (2) "Applicant" means a nonprofit corporation that has submitted an
4 application to a sponsor or an alternate sponsor to obtain approval to
5 operate an optional school. The nonprofit corporation must be either
6 a public benefit nonprofit corporation as defined in RCW 24.03.490, or
7 a nonprofit corporation as defined in RCW 24.03.005 that has applied
8 for tax-exempt status under section 501(c)(3) of the internal revenue
9 code of 1986 (26 U.S.C. Sec. 501(c)(3)). The nonprofit corporation may
10 not be a sectarian or religious organization and must meet all of the
11 requirements for a public benefit nonprofit corporation before
12 receiving any funding under section 12 of this act.

13 (3) "Board of directors" means the board of directors appointed or
14 elected by the applicant to manage and operate the optional school.

15 (4) "Contractual performance agreement" means a contract between an
16 applicant and a sponsor or an alternate sponsor. The contractual
17 performance agreement establishes, in accordance with this chapter, the
18 terms and conditions for the management, operation, and educational
19 program of the optional school.

20 (5) "Optional school" means a public school managed by an
21 applicant's board of directors and operating independently of any
22 school district board under a contractual performance agreement
23 approved in accordance with this chapter.

24 (6) "Educationally disadvantaged students" includes students who do
25 not speak English proficiently, students with special needs, students
26 who qualify for free and reduced priced meals, students exercising
27 choice options under the federal no child left behind act of 2001, and
28 other students who may be at risk of failing to meet state and federal
29 academic performance standards.

30 (7) "Sponsor" means the board of directors of the school district
31 in which the proposed optional school will be located, when such board
32 has approved a contractual performance agreement for operation of the
33 optional school.

34 NEW SECTION. **Sec. 3.** OPTIONAL SCHOOLS--POWERS. (1) In carrying
35 out its duty to manage and operate the optional school, the board of
36 directors of an optional school may:

1 (a) Hire, manage, and discharge any optional school employee in
2 accordance with the terms of this chapter and that school's contractual
3 performance agreement;

4 (b) Enter into a contract with any school district, or any other
5 public or private entity, also empowered to enter into contracts, for
6 any and all real property, equipment, goods, supplies, and services,
7 including educational instructional services;

8 (c) Rent, lease, or own property, but may not acquire property by
9 eminent domain. All contractual performance agreements and optional
10 school contracts with other public and private entities must include
11 provisions regarding the disposition of the property if the optional
12 school fails to open as planned, closes, or the contractual performance
13 agreement is revoked or not renewed;

14 (d) Issue secured and unsecured debt to manage cash flow, improve
15 operations, or finance the acquisition of real property or equipment.
16 Such an issuance does not constitute an obligation, either general,
17 special, or moral of the state, the optional school sponsor, the school
18 district in which the optional school is located or any other political
19 subdivision or agency of the state. Neither the full faith and credit
20 nor the taxing power of the state, the optional school sponsor, the
21 school district in which the optional school is located, or any other
22 political subdivision or agency of the state may be pledged for the
23 payment of such debt;

24 (e) Accept and administer for the benefit of the optional school
25 and its students gifts, grants, and donations from other governmental
26 and private entities, excluding sectarian or religious organizations.
27 Optional schools may not accept any gifts or donations the conditions
28 of which violate this chapter.

29 (2) An optional school may not charge tuition, levy taxes, or issue
30 tax-backed bonds, however it may charge fees for optional noncredit
31 extracurricular events.

32 (3) Neither an optional school sponsor, an alternate sponsor, nor
33 the school district in which the optional school is located is liable
34 for acts or omissions of an optional school, including but not limited
35 to acts or omissions related to the application, the contractual
36 performance agreement, the operation, the performance, and the closure
37 of the optional school.

1 NEW SECTION. **Sec. 4.** LEGAL STATUS. An optional school is a
2 public school including one or more of grades kindergarten through
3 twelve, operated by a board of directors appointed or elected by an
4 optional school applicant, according to the terms of a renewable five-
5 year contract granted by a sponsor or an alternate sponsor. An
6 optional school may offer any program or course of study that another
7 public school may offer.

8 NEW SECTION. **Sec. 5.** OPTIONAL SCHOOLS--EXEMPTIONS. (1) An
9 optional school shall operate independently of any school district
10 board, under a contractual performance agreement approved by a sponsor
11 or an alternate sponsor under this chapter.

12 (2) Optional schools are exempt from all state statutes and rules
13 applicable to school districts and school district boards of directors
14 except those statutes and rules as provided for and made applicable to
15 optional schools in accordance with this chapter and in the school's
16 approved contractual performance agreement.

17 (3) An optional school's board of directors is encouraged to
18 implement a quality management system and to conduct an annual self-
19 assessment.

20 (4) All approved optional schools shall:

21 (a) Comply with state and federal health, safety, parents' rights,
22 civil rights, and nondiscrimination laws, including, but not limited
23 to, chapter 28A.640 RCW (sexual equality) and Title IX of the education
24 amendments of 1972 (20 U.S.C. Sec. 1681 et seq.) applicable to school
25 districts, and to the same extent as school districts;

26 (b) Participate in nationally normed standardized achievement tests
27 as required in RCW 28A.230.190, 28A.230.193, and 28A.230.230 and the
28 elementary, middle school, and high school standards, requirements, and
29 assessment examinations as required in RCW 28A.655.060;

30 (c) Employ certificated instructional staff as required in RCW
31 28A.410.010, however optional schools may hire noncertificated
32 instructional staff of unusual competence and in exceptional cases as
33 specified in RCW 28A.150.260;

34 (d) Comply with the employee record check requirements in RCW
35 28A.400.303;

1 (e) Be subject to the same financial and audit requirements as a
2 school district, as determined by the state auditor, including annual
3 audits for legal and fiscal compliance;

4 (f) Be subject to periodic independent performance audits conducted
5 by or at the direction of a competent state authority to the same
6 extent as other public agencies, however, an optional school is not
7 required to bear the expense of such a performance audit;

8 (g) Comply with the annual performance report under RCW
9 28A.655.110;

10 (h) Follow the performance improvement goals and requirements
11 adopted by the academic achievement and accountability commission by
12 rule under RCW 28A.655.030;

13 (i) Be subject to the accountability requirements of the federal no
14 child left behind act of 2001, including Title I requirements;

15 (j) Comply with and be subject to the requirements under the
16 individuals with disabilities education act, as amended in 1997;

17 (k) Report at least annually to the board of directors of the
18 school district in which the optional school is located, to the
19 school's alternate sponsor if the school is not sponsored by a school
20 district, and to parents of children enrolled at the optional school on
21 progress toward the student performance goals specified in the
22 contractual performance agreement;

23 (l) Comply with the open public meetings act in chapter 42.30 RCW
24 and open public records requirements in RCW 42.17.250; and

25 (m) Be subject to and comply with legislation enacted after the
26 effective date of this section governing the operation and management
27 of optional schools.

28 (5) A member of a board of directors of an optional school shall be
29 considered the equivalent of a board member of a school district for
30 the purposes of public disclosure requirements and must comply with the
31 reporting requirements in RCW 42.17.240.

32 NEW SECTION. **Sec. 6.** ADMISSION REQUIREMENTS. (1) To effectuate
33 the primary purpose for which the legislature established optional
34 schools, an optional school must be willing to enroll educationally
35 disadvantaged students and may not limit admission on any basis other
36 than age group and grade level. Consistent with the legislative intent

1 of this chapter, an optional school shall conduct timely outreach and
2 marketing efforts to educationally disadvantaged students in the school
3 district in which the optional school will be located.

4 (2) An optional school must be structured to provide sufficient
5 capacity to enroll all students who wish to remain enrolled in the
6 school after its conversion to an optional school, and may not displace
7 students enrolled before the conversion. If, after enrollment of these
8 students, capacity is insufficient to enroll all other students
9 remaining who have submitted a timely application, the optional school
10 must give enrollment priority to siblings of students who are currently
11 enrolled in the school. Students selected to fill any remaining spaces
12 must be selected only through an equitable selection process, such as
13 a lottery.

14 NEW SECTION. **Sec. 7.** OPTIONAL SCHOOL APPLICATION. (1) An
15 applicant may apply to a sponsor or an alternate sponsor to establish
16 an optional school in accordance with this section.

17 (2) An application for an optional school must be submitted first
18 to the board of directors of the school district in which the proposed
19 optional school will be located, allowing for the board's consideration
20 of the application in accordance with subsections (3) and (4) of this
21 section, before the application may be submitted to an alternate
22 sponsor.

23 (3) The school district board of directors must decide, within
24 forty-five days of receipt of the application, whether to hold a public
25 hearing in the school district for the purpose of taking public comment
26 on the application and, if a hearing is to be held, must schedule such
27 a hearing within seventy-five days of receipt of the application. If
28 the school board intends to accept the application, one or more public
29 hearings must be held prior to the granting of a contractual
30 performance agreement; however a school board is not required to hold
31 a public hearing prior to rejecting an application. The school board
32 must either accept or reject the application within one hundred five
33 days after receipt of the application. The one hundred five-day
34 deadline for acceptance or rejection of the optional school application
35 may be extended for an additional thirty days if both parties agree in
36 writing.

1 (4) If the school board elects not to hold a public hearing or
2 rejects the application after holding one or more public hearings, the
3 school board must notify the applicant in writing of the reasons for
4 that decision. The applicant may submit a revised application for the
5 school board's reconsideration and the school board may provide
6 assistance to improve the application. If the school board rejects the
7 application after submission of a revised application, the school board
8 must notify the applicant in writing of the reasons for the rejection.

9 (5) Applications may not be submitted to an alternate sponsor
10 without the prior consent of the school district board of directors.
11 At the request of the applicant, the sponsor, or the alternate sponsor,
12 the superintendent of public instruction may review the optional school
13 application and provide technical assistance.

14 (6) Alternate sponsors must comply with the procedures in
15 subsections (1) through (4) of this section for consideration of the
16 optional school application. An alternate sponsor is not bound by a
17 school district's or another alternate sponsor's findings or decision
18 to deny the application.

19 (7) If a school district board rejects an application, the
20 applicant may elect one of the following options, which shall
21 constitute the applicant's final opportunity to appeal a decision
22 rejecting the application:

23 (a) An applicant may appeal a decision by a school district board
24 of directors to reject an application to the state board of education
25 within thirty days of the district board's decision. The state board
26 shall hold a public hearing in the school district within forty-five
27 days of receiving written notice of the appeal and shall consider the
28 application based on the approval criteria in section 9 of this act and
29 may consult with other appropriate agencies. The state board shall
30 make a final determination that the application should be accepted or
31 rejected within sixty days of receiving the notice of appeal. If the
32 state board finds after exercising due diligence and good faith, that
33 approval of the application and the conversion of the public school to
34 an optional public school would serve the intended legislative purpose
35 for which optional schools were established, the state board shall
36 direct the school district board to approve the application and

1 authorize the implementation of the contractual performance agreement;
2 or

3 (b) An applicant may request the superintendent of public
4 instruction to appoint an independent mediator to assist the school
5 district board and the applicant. The mediator shall have sixty days
6 to work with the parties to reach a consensus on the proposed
7 conversion of the school to an optional school. If the district board
8 and the applicant are unable to reach an agreement in sixty days, the
9 applicant may request that the office of the superintendent of public
10 instruction review the charter application and the findings of the
11 mediator and make a recommendation to the school district board
12 regarding the application. The cost of mediation shall be shared
13 equally between the applicant and the school district board.

14 (8) The superintendent of public instruction shall maintain copies
15 of all approved contractual performance agreements. An applicant may
16 obtain copies of those applications from the office of the
17 superintendent of public instruction.

18 (9) Educational service districts and the superintendent of public
19 instruction are encouraged to assist schools and school districts in
20 which significant numbers of students persistently fail to meet state
21 standards with completing the conversion process to an optional school.
22 Assistance from an educational service district or from the
23 superintendent of public instruction may include, but is not limited
24 to, identifying potential eligible applicants and assisting with the
25 optional school application and approval processes.

26 (10) Consistent with the corrective action provisions in the
27 federal no child left behind act of 2001, the superintendent of public
28 instruction may use the conversion process as an intervention strategy
29 for the purpose of meeting federal student achievement and
30 accountability requirements. The superintendent may require a local
31 school district board of directors to convert a public school to an
32 optional public school or, if the superintendent determines it would be
33 more appropriate, may require a local school district board of
34 directors to consent to conversion of the school to an optional school
35 by the board of directors of the local educational service district.

1 NEW SECTION. **Sec. 8.** APPLICATION REQUIREMENTS. The optional

2 school application is a proposed contract and must include:

3 (1) The identification and description of the nonprofit corporation
4 submitting the application, including the names, descriptions,
5 curriculum vitae, and qualifications, which shall be subject to
6 verification and review, of the individuals who will operate the
7 school;

8 (2) The nonprofit corporation's proposed articles of incorporation,
9 bylaws, and most recent financial statement and balance sheet;

10 (3) A mission statement for the proposed school, consistent with
11 the description of legislative intent in this chapter, including a
12 statement of whether the proposed optional school's primary purpose is
13 to serve educationally disadvantaged students;

14 (4) A description of the school's educational program, curriculum,
15 and instructional strategies, including but not limited to how the
16 optional school will assist its students, including educationally
17 disadvantaged students, in meeting the state's academic standards;

18 (5) A description of the school's admissions policy and marketing
19 program, and its deadlines for applications and admissions, including
20 its program for community outreach to families of educationally
21 disadvantaged students;

22 (6) A description of the school's student performance standards and
23 requirements that must meet those determined under RCW 28A.655.060, and
24 be measured according to the assessment system determined under RCW
25 28A.655.060;

26 (7) A description of the school's plan for evaluating student
27 performance and the procedures for taking corrective action in the
28 event that student performance at the optional school falls below
29 standards established in its contractual performance agreement;

30 (8) A description of the financial plan for the school. The plan
31 shall include: (a) A proposed five-year budget of projected revenues
32 and expenditures; (b) a plan for starting the school; (c) a five-year
33 facilities plan; (d) evidence supporting student enrollment projections
34 of at least twenty students; and (e) a description of major contracts
35 planned for administration, management, equipment, and services,
36 including consulting services, leases, improvements, purchases of real
37 property, and insurance;

1 (9) A description of the proposed financial management procedures
2 and administrative operations, which shall meet or exceed generally
3 accepted standards of management and public accounting;

4 (10) An assessment of the school's potential legal liability and a
5 description of the types and limits of insurance coverage the nonprofit
6 corporation plans to obtain. For purposes of this subsection, a
7 liability insurance policy of five million dollars is required;

8 (11) A description of the procedures to discipline, suspend, and
9 expel students;

10 (12) A description of procedures to assure the health and safety of
11 students, employees, and guests of the school and to comply with
12 applicable federal and state health and safety laws and regulations;

13 (13) A description of the school's program for parent involvement
14 in the optional school; and

15 (14) The supporting documentation for any additional requirements
16 a sponsor or alternate sponsor may impose as a condition of approving
17 the application, including but not limited to the posting of a security
18 bond.

19 NEW SECTION. **Sec. 9.** APPROVAL CRITERIA. A sponsor or alternate
20 sponsor may approve an application for an optional school, if in the
21 sponsor's or alternate sponsor's reasonable judgment, after exercising
22 due diligence and good faith, the sponsor or alternate sponsor finds:

23 (1) The applicant is an eligible public benefit nonprofit
24 corporation and the individuals it proposes to manage and operate the
25 school are qualified to operate an optional school and implement the
26 proposed educational program that is free from religious or sectarian
27 influence;

28 (2) The public benefit nonprofit corporation has been approved or
29 conditionally approved by the internal revenue service for tax exempt
30 status under section 501(c)(3) of the internal revenue code of 1986 (26
31 U.S.C. Sec. 501(c)(3));

32 (3) The mission statement is consistent with the description of
33 legislative intent and restrictions on optional school operations in
34 this chapter. The sponsor or alternate sponsor must make a finding of
35 whether or not the optional school's primary purpose is to serve
36 educationally disadvantaged students;

1 (4) The school's educational program, including its curriculum and
2 instructional strategies, is likely to assist its students, including
3 its educationally disadvantaged students, in meeting the state's
4 academic standards;

5 (5) The school's admissions policy and marketing program is
6 consistent with state and federal law, and includes community outreach
7 to families of educationally disadvantaged students;

8 (6) The school's proposed educational program includes student
9 academic performance standards and requirements that meet those
10 determined under RCW 28A.655.060 and are measured according to the
11 assessment system determined under RCW 28A.655.060;

12 (7) The application includes a viable plan for evaluating pupil
13 performance and procedures for taking appropriate corrective action in
14 the event that pupil performance at the optional school falls below
15 standards established in its contractual performance agreement;

16 (8) The financial plan for the school is designed to reasonably
17 support the optional school's educational program based on a review of
18 the proposed five-year budget of projected revenues, expenditures, and
19 facilities;

20 (9) The school's financial and administrative operations, including
21 its audits, meet or exceed generally accepted standards of accounting
22 and management;

23 (10) The assessment of the school's potential legal liability, and
24 the types and limits of insurance coverage the school plans to obtain,
25 are adequate. For purposes of this subsection, a liability insurance
26 policy of five million dollars is required;

27 (11) The procedures the school plans to follow for discipline,
28 suspension, and expulsion of students are reasonable and comply with
29 state and federal law;

30 (12) The procedures the school plans to follow to assure the health
31 and safety of students, employees, and guests of the school comply with
32 applicable state and federal health and safety laws and regulations;

33 (13) The school has developed a program for parent involvement in
34 the optional school; and

35 (14) The applicant has provided sufficient documentation
36 demonstrating it has met any additional requirements for approval of

1 the application, including but not limited to the posting of a security
2 bond.

3 NEW SECTION. **Sec. 10.** CONTRACTUAL PERFORMANCE AGREEMENT--
4 AMENDMENT. (1) An optional school application approved by a sponsor or
5 an alternate sponsor with any changes or additions, including
6 performance standards or benchmarks established by the sponsor, and
7 signed by an authorized representative of the applicant and the sponsor
8 or alternate sponsor, constitutes a contractual performance agreement.
9 The agreement must include provisions for the disposition, including
10 assignment or reassignment, of the employees of the school prior to its
11 conversion and after conversion.

12 (2) A contractual performance agreement may be amended during its
13 term at the request of the optional school board of directors and on
14 the approval of the sponsor or alternate sponsor.

15 (3) A contractual performance agreement may not prohibit and must
16 provide for application of laws applicable to optional schools or to
17 optional school boards of directors enacted after the effective date of
18 this section.

19 NEW SECTION. **Sec. 11.** OPTIONAL SCHOOL RENEWAL AND REVOCATION.

20 (1) An approved plan to establish an optional school is effective for
21 five years from the first day of operation. At the conclusion of the
22 first three years of operation, the optional school may apply to the
23 original sponsor or alternate sponsor for renewal. A request for
24 renewal must be submitted no later than six months before the
25 expiration of the contractual performance agreement.

26 (2) An optional school renewal application must include:

27 (a) A report on the progress of the optional school in achieving
28 the goals; student performance standards, including the student
29 performance standards adopted by rule by the academic achievement and
30 accountability commission in accordance with RCW 28A.655.030; the
31 number and percentage of educationally disadvantaged students served;
32 and other terms of the contractual performance agreement;

33 (b) A financial statement that discloses the costs of
34 administration, instruction, and other expenditure objects and
35 activities of the optional school; and

1 (c) All audit information from independent sources regarding the
2 optional school, if available.

3 (3) The sponsor or alternate sponsor shall reject the application
4 for renewal if the academic progress of students in the optional
5 school, as measured by the standards and assessments in RCW
6 28A.655.060, is inferior, for the most recent two consecutive years, to
7 the average progress of students in the district in which the optional
8 school is located when similar student populations are compared.

9 (4) The sponsor or alternate sponsor may reject the application for
10 renewal if any of the following occurred:

11 (a) The optional school materially violated its contractual
12 performance agreement with the sponsor or alternate sponsor;

13 (b) The students enrolled in the optional school failed to meet
14 student performance standards identified in the contractual performance
15 agreement, including the student performance standards adopted by rule
16 by the academic achievement and accountability commission in accordance
17 with RCW 28A.655.030;

18 (c) The optional school failed to meet generally accepted standards
19 of fiscal management; or

20 (d) The optional school violated provisions in law that have not
21 been waived in accordance with this chapter.

22 (5) A sponsor or alternate sponsor shall give written notice of its
23 intent not to renew the optional school's request for renewal to the
24 optional school within three months of the request for renewal to allow
25 the optional school an opportunity to correct identified deficiencies
26 in its operation. At the request of the board of directors of the
27 optional school, the sponsor or alternate sponsor shall review its
28 decision for nonrenewal within forty-five days of receiving a request
29 for review and supporting documentation sufficient to demonstrate that
30 any deficiencies have been corrected from the board of directors of the
31 optional school.

32 (6)(a) The sponsor or alternate sponsor may revoke a previously
33 approved contractual performance agreement before the expiration of the
34 term of the agreement, and before application for renewal, if any of
35 the following occurred:

36 (i) The optional school materially violated its contractual
37 performance agreement with the sponsor or alternate sponsor;

1 (ii) The optional school failed to meet generally accepted
2 standards of fiscal management; or

3 (iii) The optional school violated provisions in law that have not
4 been waived in accordance with this chapter.

5 (b) Except in cases of emergency where the health and safety of
6 children are at risk, a contractual performance agreement may not be
7 revoked unless the sponsor or alternate sponsor first provides:

8 (i) Written notice to the optional school of the specific
9 violations alleged;

10 (ii) One or more public hearings in the school district in which
11 the optional school is located; and

12 (iii) A reasonable opportunity and a sufficient period of time for
13 the optional school to correct the identified deficiencies.

14 (c) If, after following the procedures in (b) of this subsection,
15 the sponsor or alternate sponsor determines that revocation of the
16 contractual performance agreement is necessary to further the intent of
17 this chapter, the sponsor or alternate sponsor may revoke the
18 agreement. The sponsor or alternate sponsor shall provide for an
19 appeal process upon such a determination.

20 (d) If a sponsor or alternate sponsor elects to revoke the
21 contractual performance agreement, the sponsor or alternate sponsor,
22 upon a request by the optional school, shall provide technical
23 assistance to the optional school in completing the plan required and
24 carrying out the tasks identified in subsection (7) of this section.

25 (7) An optional school planning to close or anticipating revocation
26 or nonrenewal of its contractual performance agreement shall provide a
27 plan setting forth a timeline and the responsible parties for
28 disposition of students and student records and disposition of
29 finances.

30 (a) Immediately following the decision to close a school, the
31 school must:

32 (i) Submit to the sponsor or alternate sponsor a list of parent
33 addresses and proof that the school has communicated the impending
34 closure of the school to all parents and staff;

35 (ii) Assign staff responsible for transition of student records and
36 for providing assistance to students and parents in transferring from

1 the optional school to the district public, private, or home school
2 chosen by the family;

3 (iii) Provide the names and contact information for staff
4 responsible for transfer of student records, as well as the projected
5 transition tasks and timelines to the sponsor or alternate sponsor, and
6 upon completion of student transition, provide a list of students and
7 a brief description of the disposition of their student records to the
8 sponsor or alternate sponsor.

9 (b) Prior to closing the optional school the optional school board
10 of directors shall:

11 (i) Identify a trustee who will, through the process of closing the
12 school and for a term of ten years thereafter, assume responsibility
13 for school and student records, and notify the sponsor or alternate
14 sponsor of the name and contact information for the trustee;

15 (ii) Determine the amount of anticipated revenue due to the school
16 as well as anticipated liabilities, and provide a complete asset and
17 liability report to the sponsor or alternate sponsor;

18 (iii) Create a current and projected payroll and payroll benefits
19 commitment;

20 (iv) List each employee, job, and the funds necessary to complete
21 the educational calendar balance of the year, the transition of
22 students and records, and the administrative close-down tasks;

23 (v) Determine the total moneys required to complete contracts;

24 (vi) Schedule an audit and set aside funds to cover costs; and

25 (vii) Provide the sponsor or alternate sponsor with a plan for the
26 closure of the school and final disposition of all property owned by
27 the optional school.

28 NEW SECTION. **Sec. 12.** FUNDING. (1) For optional schools
29 sponsored by a school district:

30 (a) For purposes of funding, students in optional schools shall be
31 considered students of the sponsoring district for state apportionment
32 purposes. Without violating section 13 of this act, the sponsoring
33 school district shall provide prompt and timely funding for optional
34 schools in amounts the schools would have generated if the students
35 were enrolled in a nonoptional public school in the district except
36 that an optional school shall not generate eligibility for small school

1 assistance. Funding for optional schools shall include regular
2 apportionment, categorical, student achievement, and nonbasic education
3 moneys, as appropriate and shall be based on enrollment, staffing, and
4 other financial information submitted by the optional school to the
5 school district as required to determine state apportionment amounts;

6 (b) Local levy moneys approved by the voters before the effective
7 date of a contractual performance agreement between a school district
8 and an applicant shall be allocated to the optional school. For levies
9 approved after the effective date of an agreement, optional schools
10 shall be included in levy planning, budgets, and funding distribution
11 in the same manner as other district-sponsored public schools in the
12 district; and

13 (c) An optional school is eligible for state matching funds for
14 common school construction if a sponsoring school district determines
15 it has received voter approval of local capital funds for the project.

16 (2) For optional schools sponsored by an educational service
17 district:

18 (a) For purposes of funding, the optional school shall be
19 considered a separate school district for state apportionment purposes
20 only. Without violating section 13 of this act, the superintendent of
21 public instruction shall provide prompt and timely funding for optional
22 schools through the apportionment funding formulas in amounts the
23 schools would have generated if the students were enrolled in a school
24 district except that an optional school shall not generate eligibility
25 for small school assistance. The funding shall include regular
26 apportionment, categorical, student achievement, and nonbasic education
27 moneys and shall be based on enrollment, staffing, and other financial
28 information submitted by the optional school to the superintendent of
29 public instruction, as required to determine state apportionment
30 amounts. Those allocations to optional schools that are included in
31 RCW 84.52.0531(3) (a) through (c) shall be included in the levy base of
32 the district in which the optional school is located.

33 (b) No local levy money may be allocated to an optional school if
34 the optional school is sponsored by an educational service district.

35 (3) To be eligible to receive state categorical program funding, an
36 optional school must serve students who would be eligible for program
37 funding if served by the school district.

1 (4) Sponsors and alternate sponsors shall submit, by November 1st
2 of each year, to the office of the superintendent of public instruction
3 annual year-end financial information, as prescribed by the
4 superintendent, for each optional school sponsored in the previous
5 school year.

6 (5) An optional school shall be entitled to the continued rent-free
7 use of its existing facility, regardless of whether the optional school
8 is sponsored by the local school district, or by an alternate sponsor
9 if the district has consented to such alternate sponsorship. The
10 district shall remain responsible for major repairs and safety upgrades
11 that may be required for the continued use of the facility as a public
12 school. The optional school shall be responsible for routine
13 maintenance of the facility, including but not limited to cleaning,
14 painting, gardening, and landscaping.

15 NEW SECTION. **Sec. 13.** ADMINISTRATION FEE. To offset costs of
16 oversight and administering the contractual performance agreement, a
17 sponsor or an alternate sponsor may retain three percent of state
18 funding and local excess levy funding, if applicable, that is being
19 driven to the optional school. Except for the administration fee in
20 this section, no other offsets or deductions are allowed, whether for
21 central administration or other off-site support services, from an
22 optional school's per-pupil share of state appropriations, local
23 levies, or other funds, unless the optional school has contracted with
24 a school district to obtain specific additional services.

25 NEW SECTION. **Sec. 14.** LEAVES OF ABSENCE. If a school district
26 employee makes a written request for an extended leave of absence to
27 work at an optional school, the school district shall grant the
28 request. The school district may require that the request for a leave
29 be made up to ninety days before the employee would otherwise have to
30 report for duty. The leave shall be granted for up to three years. If
31 the employee returns to the school district within the three-year
32 period, the employee shall be hired before the district hires anyone
33 else with fewer years of service, with respect to any position for
34 which the returning employee is certificated or otherwise qualified.

1 NEW SECTION. **Sec. 15.** STUDY OF OPTIONAL SCHOOLS. The Washington
2 institute for public policy shall study the implementation and
3 effectiveness of this act. The institute shall report to the
4 legislature on the effectiveness of optional schools in raising student
5 achievement and the impact of optional schools. The institute also
6 shall examine and discuss whether and how optional schools have
7 enhanced education reform efforts and recommend whether relaxing or
8 eliminating certain regulatory requirements for other public schools
9 could result in improved school performance at those schools. The
10 institute shall recommend changes to this chapter including
11 improvements that could be made to the application and approval
12 process. A preliminary report of the study is due to the legislature
13 by March 1, 2006, and a final report is due September 1, 2007.

14 NEW SECTION. **Sec. 16.** IMPLEMENTATION OF OPTIONAL SCHOOLS. (1)
15 Applications for optional schools may begin on the effective date of
16 this section.

17 (2) Sponsors and alternate sponsors shall promptly notify the
18 superintendent of public instruction when a contractual performance
19 agreement is approved, and shall indicate whether the optional school's
20 primary purpose is to serve educationally disadvantaged students.

21 NEW SECTION. **Sec. 17.** A new section is added to chapter 41.56 RCW
22 to read as follows:

23 This section applies to optional schools as defined in section 2 of
24 this act and the optional school's employees included in the bargaining
25 unit. The employees of optional schools shall remain members of the
26 bargaining units in the school district.

27 This section, designating optional schools as employers and
28 optional school employees as members under the teachers' retirement
29 systems, the school employees' retirement systems, and the public
30 employees' retirement systems, applies only if the department of
31 retirement systems receives determinations from the internal revenue
32 service and the United States department of labor that such
33 participation does not jeopardize the status of these retirement
34 systems as governmental plans under the federal employees' retirement
35 income security act and the internal revenue code.

1 NEW SECTION. **Sec. 18.** A new section is added to chapter 41.59 RCW
2 to read as follows:

3 (1) This section applies to collective bargaining agreements
4 between optional schools and the employees of optional schools included
5 in the bargaining unit. The bargaining unit of employees of optional
6 schools must be limited to the employees of the optional school and
7 must be separate from other bargaining units in the school district or
8 educational service district for at least the first five years of
9 operation of the optional school, after which the employees of an
10 optional school may indicate by a majority vote they desire to become
11 members of the bargaining unit in the school district in which the
12 optional school is located.

13 (2) This section, designating optional schools as employers and
14 optional school employees as members under the teachers' retirement
15 systems, the school employees' retirement systems, and the public
16 employees' retirement systems, takes effect only if the department of
17 retirement systems receives determinations from the internal revenue
18 service and the United States department of labor that such
19 participation does not jeopardize the status of these retirement
20 systems as governmental plans under the federal employees' retirement
21 income security act and the internal revenue code.

22 **Sec. 19.** RCW 41.59.080 and 1998 c 244 s 11 are each amended to
23 read as follows:

24 The commission, upon proper application for certification as an
25 exclusive bargaining representative or upon petition for change of unit
26 definition by the employer or any employee organization within the time
27 limits specified in RCW 41.59.070(3), and after hearing upon reasonable
28 notice, shall determine the unit appropriate for the purpose of
29 collective bargaining. In determining, modifying or combining the
30 bargaining unit, the commission shall consider the duties, skills, and
31 working conditions of the educational employees; the history of
32 collective bargaining; the extent of organization among the educational
33 employees; and the desire of the educational employees; except that:

34 (1) A unit including nonsupervisory educational employees shall not
35 be considered appropriate unless it includes all such nonsupervisory
36 educational employees of the employer; and

1 (2) A unit that includes only supervisors may be considered
2 appropriate if a majority of the employees in such category indicate by
3 vote that they desire to be included in such a unit; and

4 (3) A unit that includes only principals and assistant principals
5 may be considered appropriate if a majority of such employees indicate
6 by vote that they desire to be included in such a unit; and

7 (4) A unit that includes both principals and assistant principals
8 and other supervisory employees may be considered appropriate if a
9 majority of the employees in each category indicate by vote that they
10 desire to be included in such a unit; and

11 (5) A unit that includes supervisors and/or principals and
12 assistant principals and nonsupervisory educational employees may be
13 considered appropriate if a majority of the employees in each category
14 indicate by vote that they desire to be included in such a unit; and

15 (6) A unit that includes only employees in vocational-technical
16 institutes or occupational skill centers may be considered to
17 constitute an appropriate bargaining unit if the history of bargaining
18 in any such school district so justifies; and

19 (7) Notwithstanding the definition of collective bargaining, a unit
20 that contains only supervisors and/or principals and assistant
21 principals shall be limited in scope of bargaining to compensation,
22 hours of work, and the number of days of work in the annual employment
23 contracts; and

24 (8) The bargaining unit of certificated employees of school
25 districts, educational service districts, or institutions of higher
26 education that are education providers under chapter 28A.193 RCW must
27 be limited to the employees working as education providers to juveniles
28 in each adult correctional facility maintained by the department of
29 corrections and must be separate from other bargaining units in school
30 districts, educational service districts, or institutions of higher
31 education; and

32 (9) Except as provided in section 18 of this act, the employees of
33 optional schools as defined in section 2 of this act shall be members
34 of the bargaining units in the school district or educational service
35 district.

1 **Sec. 20.** RCW 28A.150.010 and 1969 ex.s. c 223 s 28A.01.055 are
2 each amended to read as follows:

3 Public schools shall mean the common schools as referred to in
4 Article IX of the state Constitution and those schools and institutions
5 of learning having a curriculum below the college or university level
6 as now or may be established by law and maintained at public expense,
7 including optional schools under chapter 28A.-- RCW (sections 1 through
8 16 and 21 of this act).

9 NEW SECTION. **Sec. 21.** CAPTIONS NOT LAW. Captions used in this
10 chapter do not constitute any part of the law.

11 NEW SECTION. **Sec.22.** Sections 1 through 16 and 21 of this act
12 constitute a new chapter in Title 28A RCW.

13 NEW SECTION. **Sec. 23.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected."

17 Correct the title.

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